REMARKS

This is intended as a full and complete response to the Office Action dated November 26, 2008, having a shortened statutory period for response set to expire on February 26, 2009. Please reconsider the claims pending in the application for reasons discussed below.

Claims 21-26, 41, 43, 44 and 46 are pending in the application. Claims 21-26, 41, 43, 44 and 46-56 remain pending following entry of this response. Claims 21 and 44 have been amended. New claims 47-56 have been added to recite aspects of the invention. Applicants submit that the amendments and new claims do not introduce new matter.

Further, Applicants are not conceding in this application that those amended (or canceled) claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the claimed subject matter. Applicants respectfully reserve the right to pursue these (pre-amended or canceled claims) and other claims in one or more continuations and/or divisional patent applications.

Statement of Substance of Interview

On February 18, 2009, a telephonic interview was held between Gero G. McClellan (attorney of record), Johnny Lam (attorney for Applicants), and Examiner Fred Peng. The parties discussed the cited references including *Bux*. Claim 21 was discussed. During the interview, Applicants argued that *Bux* does not teach the limitation of "time period requirement before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server." No agreement could be reached at the time of the interview.

Claim Rejections - 35 U.S.C. § 103

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy et al.*, U.S. Patent No. 6,526,575 (hereinafter *McCoy*) in view of *Esch et al.*,

U.S. Patent No. 5,099,319 (hereinafter *Esch*), *Boylan, III et al.*, U.S. Publication No. 2002/0166120 (hereinafter *Boylan*), and *Bux et al.*, U.S. Patent No. 5,319,648 (hereinafter *Bux*).

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy*, *Boylan*, *Esch*, *Bux* in view of *Plotnick et al.*, U.S. Publication No. 2008/0059997 (hereinafter *Plotnick*).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy*, *Boylan*, *Esch* and *Bux* in view of *Gordon et al.*, U.S. Patent No. 5,920,700 (hereinafter *Gordon*).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy*, *Boylan*, *Esch*, *Bux* and *Gordon*, in view of *Valentine et al.*, U.S. Patent No. 6,253,079 (hereinafter *Valentine*).

Claims 41, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy*, *Bux*, *Boylan*, *Esch* in view of *Nakamura et al.* U.S. Patent No. 5,913,039 (hereinafter *Nakamura*).

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McCoy*, *Bux*, *Boylan*, *Esch* in view of *Tsuda*, U.S. Patent No. 5,345,594.

Applicants respectfully traverse this rejection.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

(A) determining the scope and content of the prior art;

(B) ascertaining the differences between the claimed invention and the prior art;

(C) resolving the level of ordinary skill in the art; and

(D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Respectfully, Applicants submit that the Examiner has not properly characterized the teachings of the references and/or the claims at issue. Accordingly, a *prima facie* case of obviousness has not been established.

For example, the Examiner suggests that the references teach "the control parameters including a playtime lookahead window parameter that sets a time period requirement specifying a time period before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server." Specifically, the Examiner asserts as follows:

> Bux discloses a receiving station to report missing I-frames of a video data transmission during a given time period in order to retransmit from the transmission station (Col1 lines 25-31; Col 4 lines 3-9).
> Therefore, the design incentive of solving the problem of reporting the missing local spot within a time period would have prompted one of ordinary skill in the art to implement a predictable variation of the prior art system of Bux to apply the known principle of protocol, reporting missing data within a certain period of time, to a known higher level applications such as local advertisements.
>
> . . . .
>
> Although Bux (US 5,319,648) from the advisory references only teach about packet/frame level protocol; however, this known method would have prompted one of ordinary skill in the art to implement a variations of this method and produce a predictable results such as higher level application of local advertisement, comprising multiple of I-frames transmission, as taught by Boylan in view of McCoy (teaches program feed, multimedia clips and associated control parameters such as telecast time) and Esch (teaches switching between program feed and local spot).

Office Action, pages 5, 2-3 (emphasis added). With all due respect, there are numerous flaws with the Examiner's analogy and Applicants find it difficult to recognize and relevant relationship between *Bux* and the present claims. For example, the Examiner apparently analogizes "information frames of a data transmission" in *Bux* to a local spot. Respectfully, local spots are not analogous to the frames (or packets) of *Bux*. Frames (or packets) are basic, essential units of network information based on a network protocol and used with all transmitted information regardless of content or type. In contrast, a local spot is an amount of data organized and based on a type of content of the data. Consequently, the references fail to teach or suggest any time period

requirement relating to scheduled playout of a local spot. Therefore, the person of ordinary skill in the art reading the references would *not* have added any time period requirement relating to scheduled playout of a local spot, as required by claim 21. On this basis alone, the rejection is defective and should be withdrawn.

Furthermore, the Examiner apparently analogizes "a given time period" in *Bux* to "time period requirement specifying a time period before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server." By merely asserting that "a given time period" is taught, the Examiner is wholly ignoring substantive limitations of the claims (namely, the underlined limitations), thereby fundamentally misconstruing the claim. Thus, for the reasons set forth above, individually and collectively, the references do not teach or suggest "the control parameters including a playtime lookahead window parameter that sets a time period requirement specifying a time period before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server." Accordingly, Applicants submit that the rejection is defective and should be withdrawn.

Further, even assuming, *arguendo*, that the "given time period" of *Bux* is somehow analogous to the "time period" of claim 21, the references nevertheless fail to disclose "the control parameters including a playtime lookahead window parameter that sets a time period requirement specifying a time period before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server." To illustrate, the cited portion of *Bux* reads as follows:

> For acknowledging reception of the latest information frame, and for requesting the retransmission of incorrectly received information frames, so called "Checkpoint Frames" are transmitted at regular intervals from the receiving to the sending station.
>
> . . . . . .
>
> Acknowledgement of correctly received [information] frames and request for retransmitting of missing [information] frames occurs as follows: A receiving station transmits a check-point frame (CP-frame) to a sending station with which it has a session when a given time interval has elapsed since the last transmission of a CP-frame . . . .

Bux, col. 1, lines 25-31; col. 4, lines 3-9. As an initial matter, it should be clear from the passage above that *Bux* does not disclose any parameter at all, much less a "playtime lookahead window parameter" that sets the time period requirement. In other words, *Bux* discloses a time period that is defined relative to the last transmission of a checkpoint frame. In contrast, Applicants claim a time period that is not defined relative to any *transmission* of data. Instead, Applicants claim a time period "before the scheduled playout of a local spot." Put another way, the *time period relative to transmission of data* fails to teach a time period relative to a scheduled playout of a local spot at a remote site server. In fact, *Bux* is directed to data transmission at a network level and is agnostic to particular types of content (such as a local spot). Further still, *Bux* fails to disclose that "each of the remote site servers checks to report to the central server" during the specified time period. In fact, *Bux* fails to disclose any type of "checking" action occurring during the specified time period. For the reasons set forth above, individually and collectively, the references fail to disclose "the control parameters including a playtime lookahead window parameter that sets a time period requirement specifying a time period before the scheduled playout of a local spot at which time each of the remote site servers checks to report to the central server a local spot missing at the remote site server.

In summary, the Examiner's rejection in view of *Bux* is premised on fundamentally flawed analogies and/or a basic mischaracterization of the *Bux* and/or the claims making it difficult to make any reasonable comparison between *Bux* and the claims. Accordingly, Applicants respectfully submit that the rejection is defective and should be withdrawn.

Moreover, the Examiner suggests that the references teach "the plurality of control parameters including one or more parameters specifying requirements for availability of the local spots on the central site server to the one or more remote servers to allow playout of the local spots." Specifically, the Examiner asserts as follows:

> McCoy teaches control parameters for a program telecast schedule including promotion program such as local ad (FIG.19; Col 4 lines 33-44); Boylan further discloses a local advertisement can be transmitted from a

> central site server (FIG.7; FIG.10). Therefore, it would have been obvious to one of ordinary skill in the art to have multiple options to include local advertisements from a remote source to accommodate the scheduled local ad broadcasting.

Office Action, page 3. That is, the Examiner apparently analogizes "control information for a program telecast schedule" in McCoy to teach "the plurality of control parameters including one or more parameters specifying requirements for availability of the local spots on the central site server to the one or more remote servers to allow playout of the local spots." Respectfully, a program telecast schedule is not the same as "requirements for availability of the local spots on the central site server to the one or more remote servers." A program telecast schedule may list names and times of scheduled programs. However, a program telecast schedule does not teach or suggest any "requirements for availability of local spots on the central site server to the one or more remote servers." In fact, a program telecast schedule simply does not concern itself with "availability of local spots on a central site server to remote servers." Further, none of the references disclose any control parameter that specifies requirements for availability of local spots on a central site server to remote servers. Therefore, the references do not teach or suggest this limitation. Accordingly, Applicants submit that the rejection is defective and should be withdrawn.

Further, the Examiner's rationale for combining *McCoy* and *Boylan* is improper. Specifically, *McCoy* teaches away from distributing local spots to remote sites from a central site server. Moreover, the proposed combination of *McCoy* and *Boylan* fundamentally changes a principle of operation of *McCoy*. Further still, the proposed combination renders *McCoy* unsatisfactory for its intended purpose.

The Examiner's rationale for combining *McCoy* and *Boylan* is improper because *McCoy* teaches away from distributing local spots to remote sites from a central site server. *McCoy* teaches that while multimedia distribution systems are welcomed by (local) cable operators (*McCoy*, col. 1, lines 35-41), cable operators seek more sophisticated scheduling capabilities for promotions in order to maximize returns from their advertisements (*McCoy*, col. 1, lines 52-62). Further, *McCoy* teaches that cable operators have limited ways to input their preferences that determine the types of

promotions to be broadcast to their particular subscribers (*McCoy*, col. 1, lines 63-66). To remedy such problems, *McCoy* teaches having local commercials entered locally by each cable operator to permit advertising for local retailers or television programs to be viewed by customers of a cable operator. *See, e.g.*, *McCoy*, col. 13, lines 47-56 (emphasis added). Thus, *McCoy* teaches away from distributing local spots to remote sites from a central site server. On this basis alone, the Examiner's rationale for combining *McCoy* and *Boylan* is improper.

Moreover, the Examiner's rationale for combining *McCoy* and *Boylan* is improper because the combination fundamentally changes a principle of operation of *McCoy* and renders *McCoy* unsatisfactory for its intended purpose. Specifically, the Examiner asserts as follows:

> McCoy is silent on distributing a local spots from a central site server to one or more remote site servers . . . . In analogous art, Boylan teaches distributing local advertisements for different regions from a central site to remote sites (see fig. 7, pg. 5, Para. 0061). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McCoy by distributing a local spots[*sic*] from a central site server to one or more remote site servers as taught by Boylan in order to provide local advertisements to different regions and reduce the processing at the downlink facility.

Office Action, page 5. That is, the Examiner suggests modifying *McCoy* by distributing a local spot from a central server to one or more remote site servers, as taught by *Boylan*. However, *distributing a local spot from a central server to remote servers* is wholly contrary to a principle of operation of *McCoy* of *having local commercials entered locally by each cable operator* (i.e., at a remote server). Therefore, modifying *McCoy* to distribute a local spot from a central server to one or more remote servers (as taught by *Boylan*) fundamentally changes a principle of operation of *McCoy*. On this basis alone, the Examiner's rationale for combining *McCoy* and *Boylan* is improper. Further, distributing a local spot from a central server to one or more remote site servers presumes that cable operators do not enter local commercials locally. Consequently, distributing a local spot from a central server is wholly antithetical to the intended purpose of *McCoy* to permit local cable operators to determine the types of promotions to be broadcast to their particular subscribers (*see McCoy*, col. 1, lines 63-66).

Therefore, modifying *McCoy* with *Boylan* to distribute a local spot from a central server to one or more remote servers renders *McCoy* unsatisfactory for its intended purpose.

For the reasons set forth above, individually and collectively, the Examiner's rationale for combining *McCoy* and *Boylan* is improper. Accordingly, Applicants respectfully submit that the rejection is defective and should be withdrawn.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. MCCLELLAN, Reg. #44227/

Gero G. McClellan
Registration No. 44,227
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicant(s)